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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 158.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* DONALD A. J. RAY,

Petitioner-Appellant,

vs.

WALTER B. MARTIN, as Warden of Attica State Prison, Attica, New York,

Appellee.

BRIEF ON BEHALF OF PETITIONER IN CERTIORARI GRANTED OCTOBER 8, 1945, ON PETITION FOR CERTIORARI FILED JUNE 23, 1945, TO REVIEW JUDGMENT OF COUNTY COURT OF WYOMING COUNTY, NEW YORK STATE, AND THE DECISION OF THE COURT OF APPEALS OF THAT STATE UPON WHICH SAID JUDGMENT WAS ENTERED.

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Opinions Below.

The opinion of the District Court (R. 7-12) is reported at 54 Fed. Supp. 218.

The opinion of the Circuit Court (R. 12-13) is reported at 141 Fed. 2d. 300.

The opinion of Wyoming County Court (R. 20-33) is reported at 181 Misc. 925.

The opinion of the Appellate Division, Fourth Department (R. 36-39) is reported at 268 A. D. 218.

The opinion of Court of Appeals (R. 43-55) is reported at 294 N. Y. 61.

Jurisdiction.

This Court has jurisdiction of this offense by virtue of the following order of this Court:

Appeal from the County Court of Wyoming County, State of New York.

Order dismissing appeal and granting certiorari, October 8, 1945.

The appeal in this case is dismissed for want of jurisdiction, sec. 237(a) of the Judicial Code as amended, 28 U. S. C., sec. 344(a). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, as required by sec. 237(c) of the Judicial Code as amended, 28 U. S. C., sec. 344(c), certiorari is granted. The Solicitor General of the United States is invited to file a brief *amicus curiae* if he is so advised.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this case. (R. 63, 64.)

The papers whereon appeal was allowed as a petition for a Writ of Certiorari were filed with this Court June 23,

1945 (cover of record) and order allowing appeal was dated May 16, 1945. (R. 60, 61.)

Statement of the Case.

The material facts are not in dispute. Appellant is serving in a New York State prison a life sentence imposed on him by the Supreme Court of that State on December 15, 1939, for the commission, at the City of Salamanca, of a "felony murder" (Penal Law, Sec. 1044, Subd. 2, Sec. 1045-a). Almost the whole of that City, including the scene of the crime, is within the bounds of Allegany Reservation of the Seneca Nation of Indians. (R. 5 to 9 and 18.)

Appellant is not an Indian, nor was the victim of the crime. (R. 4 and 5.) In this habeas corpus proceeding, appellant asserts that the State Court was without any jurisdiction of his offense, committed as it was, on an Indian Reservation. (R. 5.) No such challenge to the jurisdiction was made during the trial or on the appeal therefrom to the Appellate Courts of the State. (R. 6.) The City of Salamanca now has a population of about nine thousand. (R. 19 and 20.)

Specification of the Assigned Errors to be Urged.

The opinion of the Court of Appeals (R. 41 to 59) was so extensive as to necessitate the urging of all the assigned errors. (R. 59, 60.)

The Court of Appeals, the Court of final jurisdiction in the State of New York, egred:

1. In holding that petitioner could be tried and convicted and sentenced for a violation of Section 1044, Subdi-

vision 2 and 1045-a of the Penal Law of the State of New York for the crime in question, committed, as it was, by a non-Indian as against a non-Indian in the City of Salamanca, New York. The present City of Salamanca, being part of the Allegany Reservation, which, with several other such areas, was set aside by the United States, pursuant to Treaties, for the Seneca Nation of Indians.

2. In holding that the New York State Court had jurisdiction of the offense in question (felony murder) despite the terms of a treaty entered into with the Iroquois Six Nations of Indians in 1794 (7 Stat. at Large 44.)

3. In holding that the treaty did not exclude New York State jurisdiction over the offense committed in the City of Salamanca.

4. In holding that Section 8 of the Federal Act of 1875 (Ch. 90, 18 Stat. L. 330) conferred jurisdiction of the offense in question. (fol. 92.)

5. In holding that that Act (The Federal Act of 1875) was a proper legal basis for the enactment of Section 71 of the Indian Law of the State of New York.

6. In holding that the State Court had jurisdiction of this offense by virtue of the validity of Section 71 of the Indian Law of the State of New York.

7. In holding that Section 217 of Title 25, U. S. C. annotated, did not confer jurisdiction upon the Federal Courts for the offense in question.

8. In holding that subdivision 3 of Section 451 of Title 18, U. S. C., and Section 452 of Title 18, U. S. C. did not confer the jurisdiction of the offense in question.

9. In holding that the last three mentioned sections, when read together, did not apply to the offense in question when committed on the lands in question.

Summary of Argument.

This brief will argue:

That the scene of the crime (felony murder) is within the Allegany Indian Reservation which lies wholly within New York State.

That New York's early attempt to exercise jurisdiction over this reservation and other ancient lands of the Iroquois Indians within that State invited a prolonged frontier war which the new Union was not prepared to prosecute.

That the situation thus created necessitated treaties between the Federal Government and the occupants of such lands.

That such treaties recognized the National character of the Indians and withdrew the Allegany and Cattaraugus Indian Reservations from the operation of State Laws.

That applicable Federal Statutes, enacted subsequently, were such as to show that only Congress could legislate for those lands.

That an 1875 Congressional Act extended only the State highway and bridge laws into the *locus in quo*.

That that act did not make Federal provision for enactment of a New York State Statute (Section 71 of New York

State Indian Law) which undertook to extend the laws of that state into the place in question.

That applicable Federal and State Judicial decisions establish that, aside from the extension of State highway and bridge laws as provided for in the 1875 Congressional Act, the laws of the State of New York—statutory or decisional—do not apply to the reservation in question.

That by virtue of such treaties, federal statutes and judicial decisions, the federal courts had exclusive jurisdiction of the offense.

That in view of the foregoing, appellant's incarceration by virtue of a state court commitment, is a violation of the "due process" clause of the Fourteenth Amendment of the Federal Constitution.

ARGUMENT.

POINT I.

Section 71 of the New York State Indian Law which undertook to extend into the *locus in quo* within an Indian Reservation the General Laws of the State, which included among others Section 1044, Subdivision 2 of the Penal Law, the "felony murder" for which appellant was tried and Section 1045-A of the same law under which he was sentenced to life imprisonment, is repugnant to Article I, Section 8, Clause 3 of the United States Constitution and Treaties and Federal Laws made under that constitutional provision, and the New York State Court erred in holding that section of the Indian Law was a valid basis for State jurisdiction of the offense.

Jurisdiction of this offense committed as it was, on an Indian Reservation, was solely federal. Such jurisdiction is established by:

(1) Historical facts and treaties which withdrew the *locus in quo* from the operation of state laws;

(2) Applicable federal enactments showing exclusive jurisdiction;

(3) Applicable judicial interpretations decisive of the issue.

(1) Historical Facts and Treaties which Withdrew the locus in quo from the Operation of State Laws.

The *locus in quo* (the present City of Salamanca) is part of the Allegany Reservation, which, with several others, was set aside by the United States for the Seneca Nation by virtue of four different treaties[1] with the Iroquois[2] and a subsequent treaty[3] with the Senecas.

After General Sullivan's punitive expedition against the Indians in 1779, New York attempted to exercise jurisdiction over the Iroquois and their lands within that State. This jurisdictional assertion by New York consisted of an effort to rid the State of the Senecas and three other nations of the Iroquois and to move the two remaining nations of

[1] Treaty October 27, 1784 with the Six Nations, 7 Stat. at Large 15; Treaty of January 9, 1789, *id.* 33; Treaty of October 11, 1794 *id.* 44, (appendix A to brief, pages 32-35); Treaty of January 15, 1838 *id.* 550, with supplemental articles on February 13, 1838 *id.* 561;

[2] Five united nations of Indians which originally occupied what is now northern and western New York State subsequently banded together with a sixth tribe of Indians from North Carolina and became known as the "Iroquois" or "Six Nations." Through subsequent conquest, expulsion, alignment and absorption of other tribes more than 35 western tribes were brought under their influence and leadership. The Iroquois insisted on acting in their collective capacity and England and several of the colonies, acting together, observed this demand by entering into treaties with them prior to the Revolution. (The historical facts for this statement, and all statements involving the historical facts relied on in this brief in connection with the treaties are taken from Cohen's Hand Book of Federal Indian Law pages 416 to 422.)

[3] Treaty of May 22, 1842 with the Seneca Nation of Indians, 7 Stat. at Large 586.

the Six Nations to a small part of the lands of the Senecas in the western part of the State. Because this procedure, employed by New York to further her jurisdictional claim, was proving antagonistic to the Iroquois and because of the possibility that the Six Nations were in a position to enlist the aid of more than thirty-five western tribes of Indians, under their influence and leadership, in a united general offensive, which the new Union was not, at that time, prepared to meet, Washington, in 1783, made a personal trip to New York.

Appreciative of the importance of these Indians in relation to all of the states and aware of the fact that any delayed condonation of New York's move would precipitate a long, cruel and expensive frontier war, the Central Government, in 1784, made a treaty of peace with the Iroquois.[5] While the 1784 Treaty negotiations were being carried on, New York, in a further attempt to assert jurisdiction and challenge the jurisdiction of the Central Government, arrested the treaty agents of the confederated government.[6]

[5] This treaty set forth in 7 Stat. 33, in substance provided:

"(a) A treaty of peace and general amnesty between the Iroquois and the United States with provisions for prisoners of war and relinquishment of their claim to roughly all lands west and south of what is now New York; (b) a treaty with Pennsylvania relinquishing all lands in that state; and (c) a treaty between New York and the Oneidas and Tuscaroras, relinquishing certain of their lands."

[6] Richard Henry Lee, later President of the Continental Congress, in writing to George Washington concerning the efforts of New York to obstruct the treaty, said:

"* * * I understand, from Mr. Wolcott, that the commissioners of the United States met many difficulties, thrown in their way by New York, which they overcame, at last, by much firmness and perseverance. It is unfortunate when private views obstruct public measures, and more especially when a state becomes opposed to the States; because, it seems to confirm the predictions of those who wish us not well, and who cherish hopes from a discord arising from different interests." (Ballagh, James Curtis, The Letters of Richard Henry Lee (1911) vol. 2, p. 298.)

After the adoption of the Constitution in 1787, Great Britain still retained forts in New York and the Northwest Territory in violation of the treaty of peace and was arming the western Indians and the Iroquois and inciting them to hostilities against the United States. To cope with this emergency which tended to endanger its survival, the United States in 1789 again entered into a treaty with the Iroquois recognizing the Indians as distinct and separate political communities capable of managing their internal affairs as they had always done.[7] Following this, the settlement of the Northwest by Whites resulted in friction between the Indians and the settlers which broke out into frontier wars. A continuation of conditions responsible for the making of the 1789 treaty and the western frontier wars created a decided unrest particularly among the Senecas.

To overcome this threat, the United States, again in 1794, entered into a third treaty (App. A to b., pp. 32-35) with the Iroquois[8]. This treaty, subject to subsequent federal enactments, (discussed further on in this brief) is the treaty which now applies to, controls, and determines the jurisdictional rights of the Allegany and Cattaraugus Reservations. This is so despite a subsequent treaty in 1838 between the United States and the Six Nations[9] and a still subsequent 1842 treaty[10] (App. B to b., pp. 35-36) between the United States and the Seneca Nation of Indians. The 1842 Treaty abrogated the provisions of the 1838 Treaty which would have extinguished the Indian title

[7] This Treaty set forth in 7 Stat. at Large 33 granted to the Iroquois a substantial annuity and they in turn agreed to continue at peace.

[8] This treaty of November 11, 1794 is set forth in 7 Stat. at Large 44 and App. A to brief pp. 32-35;

[9] Treaty of January 15, 1838, 7 Stat. at Large 550 with supplemental articles on February 13, 1838 *id.* 561;

[10] Treaty of May 22, 1842 with the Seneca Nation of Indians, 7 Stat. at Large 586 and App. B to brief pp. 35-36.

to those two reservations and expressly reserved all the rights enjoyed by those two reservations under the 1794 Treaty.

Reversion of the rights of this reservation to the 1794 Treaty is set forth and explained in the following review of the facts in the case of New York Indians, 5 Wall., (U. S.) 761 where, at page 767, the court said:

> "By the treaty of 1838 the Seneca nation on these reservations agreed to remove to the west of the Mississippi River, and, at the same time, with the consent of the United States, sold their lands to Ogden & Fellows, who held the pre-emptive right, derived from Massachusetts, and executed a conveyance of the same. The treaty provided for the removal within five years. It was proclaimed April 4, 1840. Before the expiration of the five years, difficulties arose between the grantees and the Indians, which resulted in a new treaty, 20th May, 1842, between the United States and the Seneca nation, when it was agreed that the deed embracing these two reservations should be cancelled, and the Indians remain as before with all their original rights. The words are: 'The said nation shall continue in the occupation and enjoyment of the whole of the said two several tracts of land, called the Cattaraugus reservation and the Allegany reservation, with the same right and title in all things as they had and possessed therein immediately before the sale of said reservation.'"

Analysis of Applicable 1794 Treaty.

In connection with a proper analysis of this 1794 Treaty, it must be realized that the provisions of the Articles of that Treaty would, of necessity, have to be considered as worthless and unnecessary if there existed in the minds of the parties to the Treaty any understanding that New York State had, or was to have, jurisdiction over the designated lands and their occupants.

The following portion of the preamble of the Treaty clearly discloses that existing causes of complaint were to be removed from the minds of the Indians:

> "The President of the United States having determined to hold a conference with the Six Nations of Indians, for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them; * * *." App. A to b. pp. 32-35.)

With the above quoted portion of the Treaty in mind, the provisions of the articles of the treaty must be looked to in order to determine what such causes of complaint were.

ARTICLE I of this Treaty provided for the establishment of perpetual peace and friendship between the parties.

ARTICLE II dealt with the boundaries of other nations of Indians.

ARTICLE III defined the boundaries of the lands of the Seneca nation in the State of New York and acknowledged all of that land to be the property of the Seneca nation. Included within those lands is the present City of Salamanca. It further provided that the U. S. would never claim the land nor disturb the Seneca nation, nor any of the six nations or their Indian friends residing thereon and united with them, in the free use and enjoyment thereof and it was to remain theirs until they chose to sell the same to the People of the U .S.

This article evidenced three separate complaints and one over-all complaint. The first was one regarding territorial limits of the lands. The second involved the free use and enjoyment of such lands, and the third dealt with a complaint regarding any possible attempt to seize the de-

fined lands at some later date. In its entirety it clearly evidenced a complaint to avert any renewed attempt by New York to exercise jurisdiction over the lands and occupants thereof. The precaution taken by this article would not have been necessary if the Federal Government entertained any notion that New York had, or was to have, jurisdiction.

ARTICLE IV of that Treaty provided that the Six Nations would not claim any other lands within the boundaries of the U. S. nor disturb the people of the U. S. in the free use and enjoyment thereof.

ARTICLE V ceded to the U. S. the right of making a wagon road from Fort Schlosser on the upper Niagara to Lake Erie, as far south as Buffalo Creek, and ceded to the People of the U. S. the free and undisturbed use of this road for the purpose of travel and transportation.

Examination of this article evidenced cause to complain regarding trespass on these lands. It discloses that the only right conceded to the People of the United States, including the Legislature of the State of New York, was a right to travel or transport over the defined lands. Why the precaution provided in this article against trespassing and also the restriction as to roads through such lands, if New York State had jurisdiction?

ARTICLE VI provided for an annuity to the Indians for purchasing clothing, domestic animals, implements of husbandry and other utensils suited to their circumstances. It was also to provide for compensating useful artificers who were to reside with or near them and be employed for their benefit.

This article evidenced cause to complain as to what parties were entitled to live on these lands. It limited such right to legislative members and others employed as artificers for the benefit of the Indians. Its exceptions did not include State Police or other State law enforcement agencies.

ARTICLE VII provided for the procedure and method of ascertaining punishment to govern cases of misconduct of individuals, on either side, tending to interrupt the peace and friendship of either party. Under the procedure agreed upon the Indians were to complain of non-Indian offenders to the President, or to a superintendent appointed by him. The president or his appointee was to enter complaints of misconduct of offending Indians to the principal Chiefs of the Six Nations or the nation of which each offender was a member.

Following the complaint, such prudent measures as necessary to preserve the peace were to be pursued. This method of procedure and manner of ascertaining and determining punishment were to continue until such time as Congress made other equitable provisions for the purpose.

By express terms, this provision evidenced cause to complain, regarding the jurisdiction over misconduct of Indians and non-Indians within those lands. By express terms, jurisdiction of the misconduct of individuals which would, of necessity, include non-Indian offenders, was exclusively vested in the Federal Government by this article. This article also expressly provided that all future legislation for this reservation should be vested in Congress. Why the precaution in this Article to expressly exclude State jurisdiction over misconduct of individuals and vest it in

Federal Government if State had or was to have any degree or measure of control? Why was provision also made for future Federal Legislation?

A proper analysis of the applicable historical facts which led to the making of the treaties and the provision of the treaties clearly lead to the following conclusions set forth at page 419 of Cohen's Hand Book of Federal Indian Law:

> "The several treaties guaranteed to the Iroquois (Six Nations) the right of occupancy of their well-defined territories and had the effect of placing the tribes and their reservations beyond the operation and effect of general state laws."

In 1786, two years after the 1784 treaty, Massachusetts claimed its Royal Charter gave it sovereignty and jurisdiction over much of the lands of the Iroquois in Western New York. As a result, New York entered into a compact with Massachusetts, by the terms of which New York was recognized as having sovereignty and jurisdiction over the lands and Massachusetts was recognized as the owner of the "right of pre-emption" of the lands themselves, including the right to extinguish such title as the Indians had. This compact subsequently ratified by the Congress of the United States, authorized Massachusetts to grant and convey the right of pre-emption to individuals who were to have the right to extinguish, by purchase, the claims of the native Indians.

In 1791, Massachusetts conveyed its title, subject to the Indian claims, to Robert Morris, who later conveyed it to the Holland Land Company, Morris agreeing to extinguish the Indian rights at his own expense. He did so in 1797 when at a great council of the Senecas held at Geneva, New York, he received from the Seneca Nation a conveyance of

all the lands purchased by him from the State of Massachusetts, excepting certain Indian Reservations, including the Allegany Reservation[1] with which we are here concerned. The council was held and the conveyance made with the approval of the government of the United States, as represented by its Commissioner.

In connection with what has been pointed out regarding this right it will be noted that this claim of Massachusetts was disregarded and not considered by New York when she attempted to seize these lands from the Indians prior to the 1784 treaty. It would appear as though that resurrection of this claim and action thereon were an afterthought and seized upon as a means of circumventing the provisions of the various treaties heretofore outlined and discussed. It will also be noted, in connection with this situation, that the 1794 treaty in no way alluded to nor recognized any of the provisions of this compact.

Attention is further directed to the fact that the 1842 treaty, in no way alluded to this compact.

Despite any claim of illegality for such Congressional authorization it is clear that such Congressional authorization of this compact, insofar as attaching New York sovereignty and jurisdiction were concerned, was to apply only and if and when the Indian title to such lands had been extinguished. This case involves no quarrel with such a contention.

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[1] The Allegany Reservation, claimed by the Senecas, contains 30,469 acres, and is located on both sides of the Allegany River in Cattaraugus County, N. Y. It is about 40 miles long and averages from 1 to 3 miles in width. It is part of the area specifically reserved to the Seneca Indians in the treaty with Robert Morris at "Big Tree" September 17, 1797. (Cohen's Hand Book of Federal Indian Law, page 422.)

(2) Applicable Federal Enactments Showing Exclusive Jurisdiction.

Chapter 316 of the New York State Session Laws of 1836 authorized Indian leases to railroads. New York State Courts, however, held that such leases were not valid. (Ryan vs. Knorr, 19 Hun. 540.)

On May 9th, 1840, the New York Legislature authorized a highway tax to be assessed upon the Allegany and Cattaraugus Reservations and on May 4th, 1841, the same Legislature authorized assessment of other taxes for making roads upon the same two reservations and the Buffalo Creek Reservation. The United States Supreme Court, in 1866, held such State legislation illegal in the case of The New York Indian, *supra*. In that case, at page 771, the Court said:

> "* * * the exercise of this authority over them is an unwarrantable interference, inconsistent with the original title of the Indians, and offensive to their tribal relations."

In 1847 New York State by Chapter 466 of its Session Laws permitted a lease of lands, in the present City of Salamanca which was then an Indian Village known as "Bucktooth." On various dates thereafter the state authorized further leases of these lands within what is now Salamanca. (See *i. e.* Chapters 30, 263 and 472 of 1866 Session Laws of New York.)

Prior to 1871, dealings between the United States Government and the Indian nations had been by treaty. By act of Congress, that year, this course was abandoned with no impairment of pre-existing rights under prior treaties. (Act of March 3, 1871, R. S. Sec. 2079 (App. C to b. p. 37.) Since that time their lands and affairs have been

regulated by Acts of Congress. (U. S. vs. Kagama, 118 U. S. 375-382.) But the treaty and the Act of Congress are of like force. (Whitney v. Robertson, 124 U. S. 190.) This act is now Sec. 71 of Title 25 U. S. C.

In 1874, a New York State Supreme Court decision, unreported,[1] invalidated leases in this reservation which had been purportedly ratified by the New York State Legislature. After that Supreme Court decision, invalidating leases in the reservation, the New York State Legislature requested Congressional action which would make valid such leases. (N. Y. Sess. L. 1875, 98th Sess. page 819.) The reason as therein expressed was to relieve white settlers, misled by the unwarranted and illegal state legislation. (House Misc. Doc. 75, 43d Cong. 2d Sess. 1875, App. F to b. pp. 38-39.)

In 1875, Congress now enabled to act by virtue of the heretofore alluded act of 1871, which dispensed with treaties, complied with the state legislature's request. This act (discussed later in this brief under judicial interpretations) ratified existing leases and permitted new five-year leases. (C. 90, 18 Stat. L. 330.) By a subsequent Act of Congress, in 1890, the number of years such leases were to run was extended to 99 years. (26 Stat. 558, Ch. 1132.) This entire act is set forth in the annotations under Section 71, McKinney's New York Indian Law. What appellant considers the applicable portion of that act is set forth in appendix G to brief, pages 39-40.

By force of the provisions of Article VII of the treaty in 1794, heretofore discussed in this brief, it was pointed

[1] The decision of Judge Barker referred to in that resolution seems to have been an unreported decision at Cattaraugus Special Term in May 1874 in the case of Nelson v. Downs, quoted in part in appellant's brief in Ryan v. Knorr, 19 Hun 540 (4th Dept., 1880).

out that provision was therein made for future Federal Legislation for the Six Nations. This reference to that Article is again made at this point in the brief because three federal statutes, subsequently enacted by Congress, could, in all likelihood, have been the source of such jurisdiction without the aid of the Federal Act of 1871 which dispensed with treaties and provided for future Federal legislation for Indians and their lands. The three statutes enacted were:

Subdivision 3 of Section 451, Title 18 U. S. C. (App. D to b. p. 37.)

Sec. 452 of Title 18 U. S. C. (App. D to b. p. 38.)

Sec. 217 of Title 25 U. S. C. (App. D to b. p. 38.)

Section 452 of Title 18 U. S. C. defines "murder" and the applicable portion of Subdivision 3 of Section 451 of Title 18 U. S. C. provides for Federal jurisdiction of such offense,

> "When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof. * * *"

Appellant contends that the place in question, by virtue of the terms of 1794 Treaty, is within that definition. This contention is further fortified by the statement of the United States Supreme Court in U. S. vs. Kagama, 118 U. S. 375 where that Court, at pages 383 and 384 said:

> "It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the nation. They are communities dependent on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill feeling, the people of the States where they are found are often their

> deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, wherever the question has arisen."

This contention also finds support in the case of U. S. vs. Chavez, 290 U. S. 357, (1933). That case held that non-Indians charged with a larceny on an Indian Reservation were subject to federal jurisdiction because the reservation was a place under the exclusive jurisdiction of the United States and within the term "Indian Country" as used in Sec. 217 of Title 25 U. S. C.

Section 217 of Title 25 U. S. C. was included in the Federal revised statutes, of 1878, Sec. 2145. That section was in force at the time of the commission of the offense in question. It, in substance, provides that crimes (including murder) committed in any place within the sole and exclusive jurisdiction of the United States shall be extended to the "Indian Country".

In 1866, the United States Supreme Court in the case of New York Indians, *supra*, pointed out that the Allegany Reservation (the reservation in question) was "Indian Country" when at page 771, that Court said:

> "Any other party is an intruder, and may be proceeded against under the twelfth section of the Act of 30th June, 1834."

That Court could not have concluded that the quoted portion of the section of the 1834 act was applicable without having first determined that the place in question was "Indian Country" by force of the definition of that term which was set forth in the first paragraph of that act.

The place in question is "Indian Country" by force of subsequent United States Supreme Court decisions, which have designated what portions of the United States that term shall apply to.

Such a conclusion is clear from a reading of the following from page 561 in the case of *ex parte* Crow Dog, 109 U. S. 556 (1883):

> "In our opinion that definition now applies to all the country to which the Indian title has not been extinguished within the limits of the United States, even when not within a reservation expressly set apart for the exclusive occupancy of Indians. * * *"

That the place in question is "Indian Country" was also pointed out in the case of United States against Chavez, *supra*, wherein the Court, at page 364, said:

> "* * * Section 217, now being considered, like the section considered in that case, was originally a part of the act of 1834. One speaks of 'Indian Country' and the other of an 'Indian Nation or tribe of Indians.' The act as a whole makes it apparent that the term 'Indian Country' was intended to include any unceded lands owned or occupied by an Indian Nation or tribe of Indians, and the term continues to have that meaning, * * *."

Any doubt regarding the fact that the place in question is "Indian Country" is resolved or removed by the United States Supreme Court's decision in the case of United States against Soldana, 246 U. S. 530 (1918). There the Court held that a granting of a mere easement or fee or some other limited interest in the land of the Indians for a highway was not an extinguishment of Indian Title in the land comprised within the right of way.

Regarding this contention, see also Pronovost v. United States, 232 U. S. 487 (1914); United States against Pelican, 232 U. S. 442 (1914).

By Chapter 188 of the Laws of 1881, the State of New York enacted what is now Section 71 of the Indian Law of the State of New York. (App. H to b. p. 40). This act extended all the general laws of the State of New York over the present City of Salamanca except for taxation of the lands of an Indian not a citizen. As appears in the Act itself this piece of legislation was based on the State Legislature's interpretation of Section VIII of the Act of 1875. (App. G to b. pp. 39-40.) The Legislature's error in assuming its right to extend all state laws over this reservation by virtue of the Act of 1875 will be discussed and fully covered further on in this brief under "judicial decisions affecting this reservation."

In 1929 Congress made it clear that the State can extend its laws into the reservation only by consent of Congress, by enacting Section 231 of Title 25 U. S. C. (App. I to b. p. 41.) In that Section, Congress permitted Health Officers of the State to enter upon Indian reservations for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations and school attendance of Indian pupils, as provided by the law of the State under such rules, regulations and conditions as the Secretary of the Interior may prescribe.

One bill now before the House of Representatives and another before the Senate of the United States show that Congress recognizes that state criminal laws do not apply to individuals upon Indian reservations within a state. The applicable portion of the Bill before the House of Representatives is set forth in Appendix J to brief, pp. 41-42. The applicable portion of the Senate Bill is set forth in Appendix K to this brief, p. 42.

The pending bills seek to extend State Laws into Indian Reservations within a State.

(3) Applicable Judicial Interpretations Decisive of the Issue.

(a) Two New York State Appellate Court decisions which sustain appellant's claim.

At the October Term in 1874 and prior to the Congressional Act of 1875 the Appellate Division, Fourth Department and Appellate Court of the State of New York decided that state jurisdiction did not extend into the Allegany Reservation. In the case of Bishop vs. Barton, 2 Hun. Supreme Court Reports of New York, 436, that court, in covering the question of extension of state law into the Allegany Indian Reservation, at page 437, said:

> "* * * Part I of the Revised Statutes, in which the enactment quoted is contained, is entitled 'An Act concerning the territorial limits and divisions, the civil policy, and internal administration of this State,' it was passed as one act, December 3d, 1827. (R. S. 715; Laws of 1827, pp. 1, 2.) Upon the rule of construction adopted by this Court, and by the Court of Appeals in The People v. Molyneux, (53 Barb. 9; 40 N. Y. 113) it is manifest that the statute was intended solely for the government of citizens, and was not intended to embrace affairs pertaining to the Indians or their reservations. Legislation concerning the latter subjects, has never formed a part of the internal administration of the State, within the meaning of that Statute, but has always been quite distinct from that relating to citizens generally. (See Laws 1813 and subsequent statutes, Edm. stat. 4th vol. 342, *et seq.*) This fact strongly confirms the correctness of such construction."

Again in 1927, New York's Court of Appeals, the highest Court in that state, in the matter of Patterson against Seneca Nation, 245 N. Y. 433, 157 N. E. 734; held that the Courts of the State of New York had no jurisdiction to control by mandamus order, running to the government of the Seneca

Nation, the membership of that nation. At page 439 of that case, that court in citing with approval a U. S. Supreme Court decision, remarked:

> "In Kansas Indians (5 Wall. U. S. 737), it was said by Davis, J., that as long as the United States recognizes the national character of the Indian tribes, they are under the protection of treaties and the laws of Congress, 'and their property is withdrawn from the operation of the State laws' ".

(b) *A U. S. Supreme Court case directly in point.*

In the case of Worcester vs. Georgia, 6 Pet. 515 (1832) the U. S. Supreme Court was called upon to decide a like question concerning land reserved to the Indians within that state by virtue of a treaty similar to the one in question. In that case, involving a white man's trespass contrary to State Law, the U. S. Supreme Court held that an attempt by the State Legislature of Georgia to apply its laws to the lands set aside for those Indians, under a treaty, similar to the one in question, was repugnant to the Constitution of the United States and treaties and laws made under it.

That conclusion by the United States Supreme Court is set forth on pages 595 and 596 as follows:

> "Under the administration of the laws of Georgia, a citizen of the United States has been deprived of his liberty; and, claiming protection under the treaties and laws of the United States, he makes the question, as he has a right to make it, whether the laws of Georgia, under which he is now suffering an ignominious punishment, are not repugnant to the constitution of the United States, and the treaties and laws made under it. This repugnancy has been shown; and it remains only to say, what has before been often said by this tribunal of the local laws of many of the states in this union that, being repugnant to the constitution of the

United States, and to the laws made under it, they can have no force to divest the plaintiff in error of his property or liberty."

The treaty making power of the United States Government is dependent on Article I, Section 8, Clause 3 of the Federal Constitution and provides as follows:

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

(c) A U. S. Supreme Court case, involving the reservation in question, which held the Legislature of the State of New York could not extend its laws into these lands.

The first U. S. Supreme Court case, involving this particular reservation, is the case of New York Indians, *supra* decided in 1866. The U. S. Supreme Court in that case decided that the legislature of the State of New York could not extend its laws into this particular locality. At Page 771 of 5 Wallace's Reports, in that case, the Court said:

"It will be seen on looking into the general laws of the State imposing taxes for town and county charges, as well as into the special acts of 1840 and 1841, that the taxes are imposed upon the lands in these reservations, and it is the lands which are sold in default of payment. They are dealt with by the town and county authorities in the same way in making this assessment, and in levying the same, as other real property in these subdivisions of the State. We must say, regarding these reservations as wholly exempt from State taxation and which, as we understand the opinion of the learned judge below, is not denied, the exercise of this authority over them is an unwarrantable interference, inconsistent with the original title of the Indians, and offensive to their tribal relations.

The tax titles purporting to convey these lands to the purchaser, even with the qualification suggested that

> the right of occupation is not to be affected, may well embarrass the occupants and be used by unworthy persons to the disturbance of the tribe. All agree that the Indian right of occupancy creates an indefeasible title to the reservation that may extend from generation to generation, and will cease only by the dissolution of the tribe, or their consent to sell to the party possessed of the right of preemption. He is the only party that is authorized to deal with the tribe in respect to their property, and this with the consent of the government. Any other party is an intruder, and may be proceeded against under the twelfth section of the act of 30th June, 1834. * * *"

(d) *A United States Supreme Court denial of certiorari from a United States Circuit Court of Appeals decision holding that the 1875 Congressional Act extended only Highway and Bridge Laws into the locus in quo and that any other statutory or decisional law of the State of New York did not apply to this reservation.*

In 1941 the United States on behalf of the Seneca Nation of Indians sought to enforce cancellation of numerous leases in the present City of Salamanca, for non-payment of rent. The delinquent lessees invoked the state law in an attempt to defeat the forfeiture of said leases. In 1942 the United States Circuit Court of Appeals, Second Circuit (U. S. vs. Forness, 125 Fed. 2nd, 928), decided that such a defense could not be invoked to limit the rights granted to those Indians by virtue of treaties with the United States. Therein that Court at page 932, said: "We conclude then, that the statute did not make the 'law'—Statutory or decisional—of the State of New York applicable to the reservation". In that case, the United States Supreme Court denied Certiorari. (City of Salamanca vs. U. S. 1942, 62 S. Ct. 1293, 316 U. S. 694.)

The opinion of the Circuit Court of Appeals in the Forness case, *supra*, before reaching the above quoted conclusion, at page 932 of 125 Fed. Rep. 2d, pointed out the following as a basis for the unanimous determination of that Court:

> * * * "(2, 3) Appellees argue that this suit, brought by the United States on behalf of the Seneca Nation to enforce the cancellation, is in effect an action of ejectment, and that the action is barred by Sections 997-999 of the New York Civil Practice Act, which provide that upon a tender of the arrears of rent before judgment, the Court shall dismiss the complaint. But state law cannot be invoked to limit the rights in lands granted by the United States to the Indians, because, as the court below recognized, state law does not apply to the Indians except so far as the United States has given its consent. Worcester v. Georgia (1832) 6 Pet. 515, 560, 8 L. Ed. 483; Patterson v. Seneca Nation, 245 N. Y. 433, 156 N. E. 734; Mulkins vs. Snow, 232 N. Y. 47, 51, 133 N. E. 123; cf. The New York Indians, 5 Wall. 761, 18 L. Ed. 708. But, it is argued, such consent to the application of state law was granted by Congress, by the Act of February 19, 1875, which authorized this lease and permitted the laying out of villages on the Cattaraugus and Allegany reservations of the Seneca Nation. Section 8 of that Act provided * * * (App. G. to b., pp. 39-40.)"
>
> "(4-6) Appellees assert, and correctly, that the words 'municipal laws' often are used to refer to the laws of a country dealing with intra-mural matters as distinguished from 'international laws' dealing with its extra-mural affairs. Appellees then go on to insist that the symbol 'municipal laws' has only that single referent, regardless of context. Such an argument involves the 'one-word-one-meaning' fallacy. Similar reasoning would compel the conclusion that a clothes-h[illegible]rse is an animal of the equine species, and make it impossible to speak of drinking a toast. When, as in the statute, the 'laws' of a state of the Union are under

discussion, there can be no intelligent reference to its international or extra-mural laws, for it has none under our Federal Constitution. Appellees' construction would, in effect, read the word 'municipal' out of the statute. 'Municipal laws' of such a state can have but one referent, *i. e.*, the laws of its municipalities. The meaning is the same as when we speak of the 'Municipal Building' of the City of New York. When confronted, as we are here, with a word having two meanings, we should, of course, not select that meaning which gives it the least possible sense in the context in which it is used. In addition to the objection just indicated to appellees' construction, we can find no reason for the specific mention in the statute of state highway and bridge laws if, as appellees contend, all state laws are comprehended in the generic term 'municipal laws.' We conclude, then, that the statute did not make the 'law'—statutory or decisional—of the State of New York applicable to the reservation. The provisions of the New York Civil Practice Act, therefore, do not bar the result asked by the Indians."

Rules of the United States Supreme Court governing the granting of a writ of certiorari and United States Supreme Court decisions controlling the granting of a writ of certiorari establish the U. S. Supreme Court's satisfaction with the law as enunciated in U. S. vs. Forness, *supra*.

This decision had the legal force and effect of nullifying Section 71 of the Indian Law of the State of New York (App. H to b., p. 40) heretofore referred to and discussed in this brief.

This is so because the terms of the 1875 Act (App. G. to brief, pp. 39-40) as decided by the Forness case, *supra*, did not extend New York State Law, other than the State bridge and highway laws into this reservation.

(e) An early U. S. Supreme Court decision holding the Federal Government recognizes the National character of Indian tribes and their protection by treaty and laws of Congress to such an extent as to withdraw their property from the operation of State Laws.

In 1866 the U. S. Supreme Court in the case of The Kansas Indians, 5 Wall. U. S. 737 was called upon to decide whether the State of Kansas could tax treaty protected lands of Indian tribes within that State. At page 757 in that case the Court decided as follows:

> "As long as the United States recognizes their national character they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of State laws."

(f) A case involving murder of non-Indian, by non-Indian on reservation.

In the case of Pickett vs. U. S., 216 U. S. 456 (1910) a Non-Indian committed murder on another Non-Indian within the bounds of an Indian Reservation, after the territory within which the crime was committed became a State. There it was held the Federal Government reserved for itself the jurisdiction over crimes committed on Indian reservations which it had before the territory became a State.

This particular reservation in the State of New York, which state was one of the 13 original states, is not subject to laws applying to other reservations in other states, subsequently admitted to the Union. On admission to the Union some of the latter states, in an enabling act, expressly reserved state jurisdiction over offenses of White people on reservations within the boundaries of such states, or, if silent on the subject, state jurisdiction was presumed.

Such an enabling act was valid only where it was not contrary to an existing treaty. Donnelly v. U. S., 228 U. S. 242, (1913).

POINT II.

Treaties made under the Federal constitutional provision and Federal statutes enacted thereunder to cover the offense in question within the *locus in quo* rendered invalid Section 1044, Subdivision 2 of the State Penal Law and Section 1045-A of the same State Law, and the New York State Court erred in holding said State Penal statutes valid and applicable to the place in question without the aid of the heretofore challenged Section 71 of the State Indian Law.

What has been heretofore pointed out and discussed under Point I sustains this point without further argument.

POINT III.

Appellant's commitment and incarceration by virtue of an order of the Supreme Court of the State of New York in violation of what has been set forth under Points I and II of this brief are a violation of appellant's rights guaranteed by Amendment XIV, Section 1 of the Constitution of the United States and appellant is entitled to the remedy of habeas corpus.

Section 1 of the Fourteenth Amendment of the Constitution of the United States, insofar as applicable, provides:

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Appellant submits that what has been heretofore pointed out under Point I of this brief shows that the offense is solely within the purview of Federal Law. In view of that, he contends that his "due process" rights under the above-quoted portion of the Constitutional Amendment have been violated. Such a situation entitles Appellant to the remedy of habeas corpus. This is clear from a reading of the case of Worcester against Georgia, *supra*, wherein the U. S. Supreme Court, at page 596, said:

> "* * * This repugnancy has been shown; and it remains only to say, what has before been often said by this tribunal of the local laws of many of the states in this union that, being repugnant to the Constitution of the United States, and to the laws made under it, they can have no force to divest the plaintiff in error of his property or liberty."

Conclusion.

It is respectfully submitted, therefore, that what has been set forth under Point I of this brief establishes that the New York State Court of Appeals erred in the nine different instances charged in the assignment of errors heretofore specified in this brief, and as a consequence thereof violated appellant's "due process" rights of the Federal Constitution as urged in Point III of this brief.

Prayer for Reversal.

Because of the foregoing errors, the appellant, Donald A. J. Ray, prays that the said judgment of the County Court of the County of Wyoming, New York, and the decision of the Court of Appeals of the State of New York

upon which said judgment was entered, in the above-entitled cause, be reviewed by the Supreme Court of the United States and reversed and judgment rendered in favor of the Appellant, with costs in all courts.

Respectfully submitted,

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APPENDIX A.

Treaties and Statutes Involved.

The particular treaty involved (Vol. 7 Stat. at Large 44) Nov. 11, 1794.

Proclamation, Jan. 21, 1795.

A TREATY BETWEEN THE UNITED STATES OF AMERICA, AND THE TRIBES OF INDIANS CALLED THE SIX NATIONS.

The President of the United States having determined to hold a conference with the Six Nations of Indians, for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them; and Timothy Pickering being appointed sole agent for that purpose; and the agent having met and conferred with the Sachems, Chiefs and Warriors of the Six Nations, in a general council: Now in order to accomplish the good design of this conference, the parties have agreed on the following articles; which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the Six Nations.

ARTICLE I.

Peace and friendship are hereby firmly established, and shall be perpetual, between the United States and the Six Nations.

ARTICLE III.

The land of the Seneka nation is bounded as follows: Beginning on Lake Ontario, at the north-west corner of the land they sold to Oliver Phelps, the line runs westerly along the lake, as far as O-yong-wong-yeh Creek, at Johnson's Landing-place, about four miles eastward from the fort of

Niagara; then southerly up that creek to its main fork, then straight to the main fork of Stedman's creek, which empties into the river Niagara, about fort Schlosser, and then onward, from that fork, continuing the same straight course, to that river; (this line from the mouth of O-yong-wong-yeh Creek to the river Niagara, above fort Schlosser being the eastern boundary of a strip of land, extended from the same line to Niagara river, which the Seneka nation ceded to the King of Great-Britain, at a treaty held about thirty years ago, with Sir William Johnson;) then the line runs along the river Niagara to Lake Erie; then along Lake Erie to the north-east corner of a triangular piece of land which the United States conveyed to the state of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that state; then due east to the south-west corner of the land sold by the Seneka nation to Oliver Phelps; and then north and northerly, along Phelp's line, to the place of beginning on Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneka nation; and the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

ARTICLE IV.

The United States having thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas and Senekas, and engaged never to claim the same, nor to disturb them, or any of the Six Nations, or their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: Now, the Six Nations, and each of them, hereby engage that they will never claim any other lands within the boundaries of the United States; nor ever disturb the people of the United States in the free use and enjoyment thereof.

ARTICLE V.

The Senake nation, all others of the Six Nations concurring, cede to the United States the right of making a wag-

gon road from Fort Schlosser to Lake Erie, as far south as Buffalo Creek; and the people of the United States shall have the free and undisturbed use of this road, for the purposes of travelling and transportation. And the Six Nations, and each of them, will forever allow to the people of the United States, a free passage through their lands, and the free use of the harbours, and rivers adjoining and within their respective tracts of land, for the passing and securing of vessels and boats, and liberty to land their cargoes where necessary for their safety.

ARTICLE VI.

In consideration of the peace and friendship hereby established, and of the engagements entered into by the Six Nations; and because the United States desire, with humanity and kindness, to contribute to their comfortable support; and to render the peace and friendship hereby established, strong and perpetual; the United States now deliver to the Six Nations, and the Indians of the other nations residing among and united with them, a quantity of goods of the value of ten thousand dollars. And for the same considerations, and with a view to promote the future welfare of the Six Nations, and of their Indian friends aforesaid, the United States will add the sum of three thousand dollars to the one thousand five hundred dollars, heretofore allowed them by an article ratified by the President, on the twenty-third day of April, 1792; making in the whole, four thousand five hundred dollars; which shall be expended yearly forever, in purchasing cloathing, domestic animals, implements of husbandry, and other utensils suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated, to be made by the superintendent appointed by the President for the affairs of the Six Nations, and their Indian friends aforesaid.

ARTICLE VII.

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United Stateas and Six Nations agree, that for injuries done by individuals on either side, no private revenge or retaliation

shall take place, but, instead thereof, complaint shall be made by the party injured, to the other: By the Six Nations or any of them, to the President of the United States, or the Superintendent by him appointed: and by the Superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs: and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken until the legislature (or great council) of the United States shall make other equitable provision for the purpose.

NOTE: It is clearly understood by the parties to this treaty, that the annuity stipulated in the sixth article, is to be applied to the benefit of such of the Six Nations, and of their Indian friends united with them as aforesaid, as do or shall reside within the boundaries of the United States: For the United States do not interfere with nations, tribes or families, of Indians elsewhere resident.

IN WITNESS whereof, the said Timothy Pickering, and the Sachems and War-chiefs of the said Six Nations, have hereto set their hands and seals.

Done at Kon-on-daigua in the State of New York, the eleventh day of November, in the Year one thousand seven hundred and ninety-four.

TIMOTHY PICKERING.

APPENDIX B

Necessary Portion of Treaty Making Treaty of 1794 Applicable. (7 Stat. at Large 586.)

May 20, 1842
Proclamation,
Aug. 26, 1842.

ARTICLES OF A TREATY

Made and concluded at Buffalo Creek, in the State of New York, on the twentieth day of May in the year one thousand eight hundred and forty-two, between the

United States of America, acting herein by Ambrose Spencer their Commissioner, thereto duly authorized, on the one part, and the chiefs, headmen and warriors of the Seneca nation of Indians, duly assembled in council, on the other part.

WHEREAS a treaty was heretofore concluded, and made between the said United States, and the chiefs, headmen and warriors of the several tribes of New York Indians, dated the fifteenth day of January in the year one thousand eight hundred and thirty-eight which treaty having been afterwards amended, was proclaimed by the President of the United States, on the fourth of April one thousand eight hundred and forty, to have been duly ratified.

And whereas divers questions and differences having arisen between the chiefs and headmen of the Seneca nation of Indians or some of them, and the said Thomas Ludlow Ogden and Joseph Fellows in relation to the said indenture and the rights of the parties thereto, and the provisions contained in the said indenture and the rights of the parties thereto, and the provisions contained in the said indenture being still unexecuted, the said parties have mutually agreed to settle, compromise and finally terminate all such questions and differences on the terms and conditions hereinafter specified.

Now therefore, it is hereby mutually declared, and agreed, by and between the said parties as follows:

ARTICLE FIRST: The said Thomas Ludlow Ogden and Joseph Fellows in consideration of the release and agreements hereinafter contained, on the part of the said Seneca nation do on their part consent, covenant and agree that they the said nation (the said indenture notwithstanding) shall and may continue in the occupation and enjoyment of the whole of the said two several tracts of land, called the Cattaraugus Reservation, and the Allegany Reservation with the same right and title in all things, as they had and possessed therein immediately before the date of the said indenture, saving and reserving to the said Thomas Ludlow Ogden, and Joseph Fellows the right of preemption, and all other the right and title which they then had or held in or to the said tracts of land.

APPENDIX C.

Section Dispensing with Treaties but Reserving Existing Rights of Pre-existing Treaties.

Act of March 3, 1871

Section 2079 Rev. Stat., Sec. 71 of Title 25 U. S. C.

> No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired.

APPENDIX D.

Subdivision of Federal Statute Providing for Territorial Jurisdiction of Offense and Statute Setting Forth Facts which Make Offense of Murder, First Degree.

Section 451 of Title 18 U. S. C. insofar as applicable provides:

> "(Criminal Code 272) Places and Waters applicable: on board American vessel on high seas or Great Lakes; on land under exclusive control of United States; Guano Islands.
> The crimes and offenses defined in this chapter shall be punished as herein prescribed."

Subdivision 3 thereof provides as follows:

> "When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be for the erection of a fort, magazine, arsenal, dockyard, or other needful building."

Section 452 of Title 18 U. S. C. provides as follows:

"(Criminal Code, Section 273.) Murder; first degree; second degree; Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery, or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed is murder in the first degree. Any other murder is murder in the second degree. (R. S. Sec. 5339; Mar. 4, 1909, c. 321, Sec. 273, 35 Stat. 1143.)"

APPENDIX E.

Statute which Extends Crime in Question to City of Salamanca.

Section 217, Title 25 U. S. C. reads as follows:

"Except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States, as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian Country. (R. S. Sec. 2145.)"

APPENDIX F.

House Record, Disclosing Acknowledgment that only Congress can Legislate for this Reservation and Recognition of Judicial Decision that State Law cannot be Extended into Reservation.

House Misc. Doc. No. 75, 43d Cong., 2d sess. (1875) reads as follows:

On motion of Mr. Scudder:

Whereas the legislature of the State of New York, has, at different times, ratified on confirmed leases between Indian and white settlers on the Allegany Indian reservation in said State; and,

Whereas the courts of this State have decided that said ratification is null and void, the Congress of the United States alone possessing power to deal with and for the Indians, and that as Judge Barker, of the supreme courts of this State, in an elaborate opinion, given in a suit to test the legality of such ratification of leases, did say that State action alone cannot accomplish the results; that the State should, through its legislature and executive officers, take appropriate steps to secure the aid and co-operation of the United States to secure to the white settlers the ratification of their leases, and to protect them in their rights: Now, therefore,

RESOLVED, (IF THE SENATE CONCUR), That our Senators and Representatives in Congress are requested to lay the matter before Congress at an early day, and procure the passage of a law, or take some action for the relief of said white settlers.

RESOLVED, (IF THE SENATE CONCUR), That a copy of this resolution be furnished to each of the members of the Senate and Congress from this State.

By order: HIRAM CALKINS, Clerk.

IN SENATE, February 2, 1875.

Concurred in without amendment.

By order:

H. A. GLIDDEN, Clerk.

APPENDIX G.

Applicable Portion of Act of Feb. 19, 1875 Based on State's Request which Apparently was Relied on as a Source of New York State Court Jurisdiction. (Ch. 90, 18 Stat. L. 330.)

Section 8 of Act

"That all laws of the State of New York now in force concerning the laying out, altering, discontinuing,

and repairing highways and bridges shall be in force within said villages, and may with the consent of said Seneca Nation in council, extend to, and be in force beyond said villages in said reservations, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: Provided, nevertheless, that nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States."

APPENDIX H.

Applicable Portion of Section of New York Statute which Purports to Extend General Laws of State over City of Salamanca.

Sec. 71, Indian Law of New York State, Ch. 188 of New York laws of 1881.

Amended by Law of 1915, Ch. 339.

"Exclusion of villages from reservation; lease of lands therein; certification of copies of leases granted by the Seneca nation of Indians and recording thereof."

Those parts of the Allegany reservation included in the Village of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca and Red House, as surveyed, located and established pursuant to an act of Congress approved February nineteenth, eighteen hundred and seventy-five, had been constituted parts of the several towns within which they are located, and all the general laws of the state are extended over and apply to the same; except that this section shall not authorize the taxation of any Indian or the property of any Indian, not a citizen of the United States."

APPENDIX I.

Act of Congress in 1929 Showing Congressional Intent that State can only Extend its Laws into Reservation by Consent of Congress.

Section 231 of the Title 25 U. S. C.

Enforcement of State laws affecting health and education; entry of state employees on Indian lands.

The Secretary of the Interior shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or to enforce compulsory school attendance of Indian pupils as provided by the law of the State, under such rules, regulations and conditions as the Secretary of the Interior may prescribe. (Feb. 15, 1928, c. 216, 45 Stat. 1185.)

APPENDIX J.

Applicable Portion of a Recent Bill in House of Representatives which Shows Recognition by that Body that Place in Question Is not Subject to Criminal Laws of State.

79th Congress
1st Session

H. R. 3710 (July 6, 1945)

To Emancipate the Indians of the United States.

Sec. 4. (b) All Indian reservations, all persons upon such reservations, and all Indians, within any State, shall be subject to the criminal laws of such State to the same extent and in the same manner as other places and persons within such State.

(c) The Secretary of the Interior shall permit the agents and employees of a State or county in which an Indian reservation is located to enter upon such reservation for the purpose of enforcing such laws, under such rules, regulations, and conditions as the Secretary may prescribe.

(d) The Secretary of the Interior is authorized to enter into agreements with the several States, and the counties thereof, in which Indian reservations are located, to pay to such States or counties such amounts as he may determine to be proper to defray the expenses of the enforcement of the criminal laws of such States on such reservations.

APPENDIX K.

Applicable Portion of a Recent Bill in Senate which shows Recognition by that Body that Place in Question Is not Subject to Criminal Laws of State.

79th Congress
1st Session

S. 1179 (June 21, 1945)

To Provide for the Enforcement of the Penal Laws of the States on Indian Reservations and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all Indian reservations, all persons upon such reservations, and all Indians, within any State, shall be subject to the criminal laws of such State to the same extent and in the same manner as other places and persons within such State.

APPENDIX L.

Section of State Law Defining Crime and Section Governing Punishment.

Section 1044 of the Penal Law of the State of New York: Murder in first degree defined.

"The killing of a human being, unless it is excusable or justifiable is murder in the first degree, when committed:

2. By an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect the death of any individual; or without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise, * * *." (Section derived from penal code, Sec. 183 L. 1881 C. 676 as amended by L. 1882 C. 384, Sec. 1; Penal Code 183-a as added by L. 1897 C. 548, Sec. 1.)

Section 1045-a of the Penal Law of the State of New York: life imprisonment for felony murder; jury may recommend

"A jury finding a person guilty of murder in the first degree, as defined by subdivision two of section ten hundred forty-four, may, as a part of its verdict, recommend that the defendant be imprisoned for the term of his natural life. Upon such recommendation, the court may sentence the defendant to imprisonment for the term of his natural life." (Added L. 1937, C. 67, Sec. 2, eff. Mar. 17, 1937.)